NEW HAMPSHIRE INSURANCE DEPARTMENT

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Insurance Commissioner

BULLETIN

TO: All Insurers Licensed to Sell Accident and Health Insurance, Health Maintenance Organizations and Non-Profit Health Service Corporations

FROM: New Hampshire Insurance Department

DATE: June 13, 1996

RE: Chapter 294, Laws of 1994 (SB 711)

This bulletin supplements two previous bulletins dated August 30, 1994 and December 28, 1994. Its purpose is to address additional issues that have arisen with respect to the interpretation of Chapter 294, Laws of 1994 subsequent to its January 1, 1995 implementation. As did the previous bulletins, this bulletin states how the New Hampshire Insurance Department interprets Chapter 294 (RSA 420-G). These interpretations are offered to health insurers as guidelines to assist them in their efforts to comply with the requirements of Chapter 294.

RATING ISSUES:

Many of the issues brought to our attention in recent months concern premium rates. With respect to these issues, individual and small employer carriers should follow these guidelines.

1. At least one carrier has varied the community rates by using different rate tables based on the geographic location of the primary care physician chosen by the employee. As we interpret Chapter 294, this practice is not allowed when the employee's principal place of employment is in New Hampshire.

2. RSA 420-G:I.(a)(1) states that community rates shall not be modified for geographical location. This rule shall be applied to small employer groups where all employees are principally employed in New Hampshire. However, we do recognize that some small employer groups have multi-state locations. In these cases, it is permissible for a carrier to calculate premium rates for such a group that recognize the existence of employees whose employment is based outside New Hampshire. Rating in such cases should be based on each employee's workplace. For example, if a group has 20 employees based in New Hampshire, 20 employees based in Virginia and 2 employees based in Florida, the premium rates for the 20 employees principally employed in New Hampshire shall be the community rates filed and approved for use in New Hampshire. With respect to the 20 employees principally employed in Virginia, the carrier may use the premium

rates that it would use for a small employer whose employees are based exclusively in Virginia. The same procedure should be used with respect to the Florida based employees. When billing a small employer with multi-state locations, the premium rates that are billed should remain distinct for each state location rather than blended. However, when rating a small employer with multi-state locations and where only a portion of the group is in New Hampshire, a carrier, at its discretion, may use New Hampshire approved community rates for the entire group fi that would be acceptable to the other states in which the group is located.

3. Another carrier asks whether it may have one set of premium rates for small employer groups sold by its salaried field representatives and another set of premium rates for small employer groups that are sold by a broker? In raising this question, our presumption is that the difference between the two sets of rates represents the fee that the carrier pays to the broker. There is no basis in RSA 420-G for this type of differentiation in the premium rates for a small employer group. Accordingly, this practice is not permitted.

4. All premium rates billed to a small employer by a carrier shall be calculated based on the final or current enrollment in the carrier's plan. The use of proposed rates as the final rates to be billed a small employer is not permitted except where the proposed rates and the rates based on final enrollment are identical.

OTHER COMPLIANCE ISSUES:

1. Group size: Our previous bulletin dated August 30, 1994, stated that Chapter 294 applied to "small employers" employing "one and up to 100 employees." It also stated that Chapter 294 did not apply to employers with 101 or more employees. We recognize that the size of a group may change over time. Groups which at issue are "small employers" may experience an increase in the number of eligible employees. Likewise, groups that have 101 or more eligible employees at issue may experience a decrease in the number of eligible employees and become "small employers." The applicability of Chapter 294 to groups undergoing such a change will also change. For compliance purposes, any change in the applicability of Chapter 294 to a group shall be deemed to take place on the renewal date and the applicability or inapplicability of Chapter 294 shall be determined based on the number of eligible employees in the group on the enrollment date. For example, a group with 101 or more eligible employees on the date of issue but with 100 or fewer eligible employees on any subsequent renewal date will become subject to Chapter 294 as of that renewal date. Likewise, a group with 100 or fewer eligible employees on the date of issue, may have 101 or more eligible employees on any subsequent renewal date. Accordingly, as of that renewal date, Chapter 294 will no longer apply to the group. All changes in the applicability of Chapter 294 to a group will be determined by the number of eligible employees on a renewal date. Changes that take place in the size of a group between renewal dates shall be disregarded for the purpose of determining the applicability of Chapter 294.

2. Eligible employees: For purposes of determining the size of an employer group, eligible employees shall include former employees or retirees who are eligible to continue as part of the group under COBRA or under state continuation laws. Apart from, COBRA or state continuation laws, retired employees who are eligible for the same benefit plan(s) as active employees under age 65 shall be counted when determining whether the group is subject to RSA 420-G. Active employees who have yet to complete the employer's service waiting period shall not be counted as eligible employees.

3. Multi-state locations: If an employer has multi-state locations and the total number of eligible employees is 101 or more, the employer will be considered a large employer. This rule applies even if the eligible employees include fewer than 101 employees based in New Hampshire. However, if a multi-state employer with fewer than 101 employees based in New Hampshire maintains a health plan exclusively for its New Hampshire based employees, that employer's New Hampshire health plan will be subject to RSA 420-G but only if there are fewer than 101 New Hampshire based employees.

4. Group situs: The New Hampshire Insurance Department recognizes the practice of electing among the following as the situs of a group insurance policy issued to an employer: a) the state where the employer maintains its headquarters; b) the state in which the employer is incorporated; or c) the state where the largest number of employees is based. Group policies issued to "small employers" may follow this practice. To give an example, a group policy may be issued in Massachusetts to a New Hampshire-based "small employer" if there are 20 employees based at a Massachusetts facility of the "small employer" and fewer than 20 employees at the "small employer's" New Hampshire facility or facilities. However, in any case where the situs of the group policy is not New Hampshire and there are eligible employees within the "small employer" group who are principally employed in New Hampshire, the carrier shall comply with all provisions of New Hampshire law, including all provisions of Chapter 294 in providing coverage to the New Hampshire portion of any such group. In such cases, compliance with New Hampshire law, in so far as it effects the portion of the group that is based in New Hampshire, shall not differ in any way from degree of compliance that would apply had the group policy been issued in New Hampshire. On the other hand, if the group policy is issued with a New Hampshire situs and the "small employer" policyholder has employees who are principally employed in other states, New Hampshire will not require the carrier to comply with New Hampshire law in providing insurance coverage to employees based in other states. We encourage carriers to comply with New Hampshire law with respect to all employees enrolled in any group with multi-state locations as such compliance enables the carrier to simplify its administration of the group. However, since New Hampshire's group insurance requirements are extra-territorial, we recognize that other states may have extra-territorial requirements. Other states may be as interested in protecting their workers as we are in protecting our own. Thus, even if the group policy is issued in New Hampshire, we will allow the carrier to comply with the extra-territorial requirements of another jurisdiction when employees based in a jurisdiction with extra-territorial requirements are covered under the policy.

5. RSA 420-G, II(b)(1): This provision of RSA 420-G provides for portability of coverage for persons whose health benefit plan terminated due to a period of unemployment and the person lacked coverage until new employer-based group insurance becomes effective by reason of the person becoming reemployed. The last sentence of 420-G, II(b)(1) states, "The period of unemployment shall also be credited toward the time needed to satisfy any waiting period provision of the new coverage." As we understand the context in which this sentence appears, the reference to "any waiting period provision" means waiting periods that apply to pre-existing conditions, waiting periods that apply before certain benefits become effective, if any, and any other waiting periods with a similar purpose or intent. We do not interpret this sentence to include the service waiting period, i.e. the time period that transpires between the date of hire and the date the employee becomes eligible for coverage under the group insurance plan. The service waiting period is to be distinguished from the other waiting periods to which the sentence does apply, Generally, the length of the service waiting period is required by the employer, while other waiting periods are determined by the insurer in compliance with state requirements. Thus, when an unemployed person becomes reemployed, the coverage gap, or the time form the last date of the prior coverage to the effective date of the new coverage, includes the time spend unemployed and the service waiting period imposed by the new employer. While only the time spent unemployed (combined with the duration of the prior coverage) counts toward satisfying the waiting period associated with the pre-existing condition, the service waiting period should not be counted as a "gap" between coverages which interrupts continuity or which creates any detriment to a person obtaining full coverage as of the new coverage's effective date.

6. Notification of Open Enrollment: Our bulletin of August 30, 1994, stated that carriers shall provide direct notice of the designated open enrollment period to small employers at least 30 days prior to the beginning date of the open enrollment period. Because of the importance of the open enrollment period, we would reinforce this previous statement by stating that carriers should provide written notice of the open enrollment period to each small employer. Where feasible, we would suggest that such notice be incorporated into the carrier's renewal notice or other appropriate correspondence. In those cases where the employees of a small employer are offered a choice between the health plans of two or more carriers, we would encourage carriers to coordinate open enrollment periods with the other carriers whose plans are being offered. Whenever the open enrollment periods of the different carriers are conducted simultaneously, it is advantageous for all concerned: employees, carriers and the employer.

7. RSA 420-G:4,II(b): The phrase "previous health insurance or health benefits plans," as indicated by the definition under RSA 420-G:2,V (any arrangement with an entity that adjudicates and pays medical claims), is to be interpreted broadly. For example we interpret the phrase as including governmental plans such as CHAMPUS, Medicaid, Medicare or any similar plan. The phrase also includes public or private health insurance plans that provided coverage to recent immigrants at the time they left their home country to enter the United States as a legal immigrant.

Carriers with questions or comments regarding the issues discussed in this Bulletin are invited to contact Robert C Warren, Jr., Director, Life, Accident and Health Division. Carriers with a question or comment that involves rating may also contact David C. Sky, FSA, MAAA, Life and Health Actuary, e-mail address 73462.130@compuserve.com. Both can be reached at (603) 271-2261 or by FAX at (603) 271-1406.